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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,465	09/28/2004	Thomas William Bailey	PG4774USw	2241

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EXAMINER

MAUST, TIMOTHY LEWIS

ART UNIT	PAPER NUMBER
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3751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/509,465		BAILEY ET AL.	
	Examiner		Art Unit	
	Timothy L. Maust		3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/28/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5-9, 26-28, 34-39, 45, 46, 49-53, 61, 62, 67, 70-74 and 77-79 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolelli.

In regard to claims 45 and 67, the Bolelli reference discloses an apparatus for loading a container with a defined quantity of product, which comprises:

- a) a “perforated plate” 6C;
- b) a “closure” 10 for reversibly closing off a perforation in the perforated plate;
- c) a “director” 4 for directing powder into said closed-off perforation, said director comprising a first “director blade” spaced from the perforated plate; and
- d) a “transferor” 18A for transferring the contents of the perforation to said container, wherein the perforated plate and said first director blade are movable in a relative rotary fashion.

In regard to claim 46, wherein the first director blade is held static and the perforated plate is movable in rotary fashion relative thereto (see col. 2, lines 43-48).

In regard to claim 49, the “perforated plate” 6C is in the form of a planar disk having plural “perforations” (9, 9A) arranged in circular fashion thereon.

In regard to claim 50, wherein the closure comprises a “blanking plate” 10.

In regard to claim 51, wherein the closure comprises a "blanking pin" 15 inserted into the perforation.

In regard to claim 52, see column 4, lines 14-17.

In regard to claim 53, see Figure 1, wherein perforation 12 is aligned with capsule 2.

In regard to claims 61 and 62, "blade" 4 is vertically adjustable and would be capable of being adjusted to the defined heights above the plate (see col. 2, line 43).

In regard to claims 70-73, see column 3, lines 55-61.

In regard to claim 74, see "registration means" 14 in Figure 1.

In regard to claims 77-79, see column 3, lines 33-39.

In regard to claims 1, 2, 5-9, 26-28 and 34-39, the method would be inherent during normal use and operation of the device.

Claims 1, 2, 5-9, 24-46, 49-53, 63, 67-87 are rejected under 35 U.S.C. 102(b) as being anticipated by Dworak et al.

In regard to claims 45, 51, 63, 80 and 83-87, the Bolelli reference discloses an apparatus for loading a container with a defined quantity of product, which comprises:

- a) a "perforated plate" 56;
- b) a "closure" 60 for reversibly closing off a perforation in the perforated plate;

c) a “director” (84a, 84b) for directing powder into said closed-off perforation, said director comprising a first “director blade” 84a spaced from the perforated plate; and

d) a “transferor” (pins 72; see Figure 1) for “vacuum” transferring the contents of the perforation to said container, wherein the perforated plate and said first director blade are movable in a relative rotary fashion.

In regard to claim 46, wherein the first director blade is held static and the perforated plate is movable in rotary fashion relative thereto (see col. 2, lines 43-48).

In regard to claims 49 and 81, the “perforated plate” 56 is in the form of a planar disk having plural “perforations” 58 arranged in circular fashion thereon.

In regard to claim 50, wherein the closure comprises a “blanking plate” 60.

In regard to claim 52, see Figure 6 wherein plate 56 is eliminated for improved volume control.

In regard to claim 53, see Figure 1, wherein perforations 58 are aligned with pouches 39.

In regard to claims 67-69, see column 4, lines 35-44 and Figure 1.

In regard to claims 70-73, see “compactor” 78 in Figure 1.

In regard to claims 74 and 82, see “registration means” 64 in Figure 2.

In regard to claims 75 and 76, see “wiper” 88 in Figure 2.

In regard to claims 77-79, see column 3, lines 5-12.

In regard to claims 1, 2, 5-9, 24-44, the method would be inherent during normal use and operation of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolelli and Dworak et al.

The Bolelli and Dworak et al. references disclose the invention substantially as claimed (discussed supra), but do not disclose having the perforated plate being held static and the first director blade is movable in rotary fashion relative thereto or both of the first director blade and the perforated plate are movable in rotary fashion. It would have been an obvious matter of design choice to have the perforated plate being held static and the first director blade be movable in rotary fashion relative thereto or both of the first director blade and the perforated plate being movable in rotary fashion, since it has been held that a mere reversal of essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167

Claims 10-13 and 54-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolelli in view of Kincaid.

The Bolelli reference discloses the invention substantially as claimed (discussed supra), but does not disclose the first director blade presenting multiple forward acute angles to the path of relative motion. However, the Kincaid reference discloses a similar device having director blades 76 that are rockably adjustable for presenting any desired forward acute angle to the path of relative motion (see Figure 5 and column 4, lines 48-58). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Bolelli device to have adjustable director blades in view of the teachings of the Kincaid reference in order to provide a user the option of setting the blade to any desired acute angle to the path of relative motion.

Claims 10-16 and 54-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dworak et al. in view of Kincaid.

The Dworak et al. reference discloses the invention substantially as claimed (discussed supra) including curved and articulated blades, but does not disclose the first director blade presenting multiple forward acute angles to the path of relative motion. However, the Kincaid reference discloses a similar device having director blades 76 that are rockably adjustable for presenting any desired forward acute angle to the path of relative motion (see Figure 5 and column 4, lines 48-58). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to

modify the Dworak et al. device to have adjustable director blades in view of the teachings of the Kincaid reference in order to provide a user the option of setting the blade to any desired acute angle to the path of relative motion.

In regard to claim 60, It would have been an obvious matter of design choice to make the first director blade having a flat tail section, since it has been held to be within the general skill of a worker in the art to select a known shape on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 14-16 and 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolelli.

The Bolelli reference discloses the invention substantially as claimed (discussed supra), but does not disclose the first director blade being curved, articulated, or having a flat tail section. It would have been an obvious matter of design choice to make the first director blade curved, articulated and having a flat tail section, since it has been held to be within the general skill of a worker in the art to select a known shape on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 17-23 and 63-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolelli in view of Stevie or Dworak et al. in view of Stevie.

The Bolelli and Dworak et al. references disclose the invention substantially as claimed (discussed supra), but do not disclose at least one subsequent director blade being positioned 1 to 3 mm closer to the perforated plate than the first director blade. However, the Stevie reference discloses a similar device having subsequent director blades (43-47) that are vertically adjustable to vary the disposition of the material with respect to the rotating plate. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ subsequent director blades that are vertically adjustable to the Bolelli and Dworak et al. devices as, for example, taught by Stevie in order to enable vertical adjustability to vary the disposition of the material with respect to the rotating plate.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-87 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-85 of copending Application No. 10/509466. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims define an apparatus that anticipates the now claimed subject matter. Examiner takes Official Notice that anticipation falls well within the definition and scope of obviousness. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have claims drawn to the now claimed subject matter in view of Examiner's Noticed fact. Furthermore, Applicant's attention is directed to In re Goodman cited above in support of Examiner's position.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references pertain to various rotary dispensers, similar in structure to the Applicant's device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Mon. - Thur. 6:30 - 5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Timothy L Maust
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Tlm
1/5/07